IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 3796 of 2018

1. Selga Steel Industrial Pvt. Ltd. Through its Managing Director, G. Gajendran @ G. Gagendiran
2. Gajendran @ G. Gagendiran .... …Petitioners

Versus

The State of Jharkhand & Anr. ..... …Opp. Parties

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners : Mr. Kalyan Roy, Advocate
Mr. Sidhartha Roy, Advocate
For the State :Mr. Anup Pawan Topno, A.P.P.
For the O.P. No.2 : Mr. Srijit Choudhary, Advocate

9/ Dated:-01.02.2024 :-

Heard Mr. Kalyan Roy, learned counsel for the petitioners, Mr. Anup Pawan Topno, learned counsel for the State and Mr. Srijit Choudhary, learned counsel for the O.P. No.2.

2. Initially the present petition has been for quashing the N.B.W. order dated 30.06.2017 in connection with Sakchi P.S. Case No 78 of 2016, corresponding to G.R. No. 1627 of 2016, pending in the Court of learned Chief Judicial Magistrate, Jamshedpur and subsequently, the learned court has been pleased to take cognizance by order dated 20.02.2020 which was challenged by way of I.A. No. 4200 of 2022 which was allowed by order dated 09.01.2024 and in view of that the order taking cognizance dated 20.02.2020 is also under challenge in the present petition.

3. The complaint case has been filed alleging therein that the accused persons entered into an agreement with O.P. No. 2 on 10.07.2014. According to the said agreement it is agreed between the parties that the company will take the vehicle bearing registration no. NL 01K 1250 on hire on monthly rent basis at the rate of Rs. 33,000/- per month. It is also agreed that the salary of the driver/helper shall be paid by the company and cost of minor repairing, if any, shall be borne by it.

It is alleged that after the vehicle was handed over to the company only one month rent has been paid and the company has failed to make payment of rent for subsequent months.

It is alleged that in spite of repeated requests neither the vehicle was returned nor the rent was paid. It is also alleged that the company has violated the terms of agreement.

On the basis of the said complaint and pursuant to an order passed by the learned C.J.M. under Section 156(3) Cr.P.C. the instant case has been registered.

4. Mr. Kalyan Roy, learned counsel for the petitioners submits that the said complaint case was sent by the learned court under section 156(3) of Cr.P.C. and pursuant to that Sakchi P.S. Case No 78 of 2016 was registered and police submitted chargesheet and the learned court has taken cognizance. He submits that in the complaint petition itself it has been disclosed that vehicle in question was taken and the rent of one month has also been paid. It has been alleged that the petitioners were not paying rent for the vehicle in question for that the case has been filed. He submits that there is no ingredients of sections 406 and 420 of I.P.C and if any case is made out that is civil in nature. He submits that the subject matter of the complaint is for recovery of rent and no criminal case can be filed. He further submits that the case of the petitioner is covered in the light of judgment of the Hon'ble Supreme Court in the case of ***"Sarabjit Kaur Vs. The State of Punjab & Anr." (Criminal Appeal No. 581 of 2023***). He refers to para 13 of the said judgment which is quoted hereinbelow:-

> *"13. A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings. From the facts*

available on record, it is evident that the respondent No.2 had improved his case ever since the first complaint was filed in which there were no allegations against the appellant rather it was only against the property dealers which was in subsequent complaints that the name of the appellant was mentioned. On the first complaint, the only request was for return of the amount paid by the respondent No.2. When the offence was made out on the basis of the first complaint, the second complaint was filed with improved version making allegations against the appellant as well which was not there in the earlier complaint. The entire idea seems to be to convert a civil dispute into criminal and put pressure on the appellant for return of the amount allegedly paid. The criminal Courts are not meant to be used for settling scores or pressurise parties to settle civil disputes. Wherever ingredients of criminal offences are made out, criminal courts have to take cognizance. The complaint in question on the basis of which F.I.R. was registered was filed nearly three years after the last date fixed for registration of the sale deed. Allowing the proceedings to continue would be an abuse of process of the Court."

5. On the other hand, Mr. Srijit Choudhary, learned counsel for the O.P. No.2 submits that the vehicle in question was taken on rent pursuant to an agreement. However, arrears of rent was not paid for that case is made out and even chargesheet is there in the light of that case. He submits that the vehicle in question is with the petitioner. He submits that if criminal case is made out both criminal and civil proceeding can go simultaneously. He relied in the case of ***"Mahesh Chaudhary Vs. State of Rajasthan" (2009) 4 SCC 439***. He refers to para 11 and 12 of the said judgment which is quoted hereinbelow:-

11. The principle providing for exercise of the power by a High Court under Section 482 of the Code of Criminal Procedure to quash a criminal proceeding is well known. The Court shall ordinarily exercise the said jurisdiction, inter alia, in the event the allegations contained in the FIR or the complaint petition even if on face value are taken to be correct in their entirety, does not disclose commission of an offence.

12. It is also well settled that save and except in very exceptional circumstances, the Court would not look to any document relied upon by the accused in support of his defence. Although allegations contained in the complaint petition may disclose a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue. For the purpose of exercising its jurisdiction, the superior courts are also required to consider as to whether the allegations made in the FIR or the complaint petition fulfil the ingredients of the offences alleged against the accused."

6. Learned counsel for the State submits that the learned court has taken cognizance pursuant to chargesheet.

7. In reply, Mr. Kalyan Roy, learned counsel for the petitioners submits that the vehicle in question is not with the petitioners and the petitioners have filed petition before the concerned D.T.O. that said vehicle is not plying.

8. It is an admitted position that the complaint was filed for recovery of rent with regard to vehicle in question which was taken by the petitioner on rent. In the complaint petition itself it has been disclosed that one month rent was paid and thereafter the rent was not paid thus, cheating from the very beginning is not made out which is one of the ingredient for making out case of cheating. The copy of agreement was produced in course of argument by Mr. Choudhary, learned counsel for the O.P. No.2 which is taken on record. In the said agreement itself in Clause-6 it has been stated that if the 2nd party will fail to pay the monthly rent then the Ist party will take over the said vehicle in his possession and legal action will be taken and in view of said clause if any case is made out that is for specific performance for that criminal case has been lodged.

9. It is well settled that breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction and merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings.

10. So far the judgment relied by Mr. Choudhary, in the case of ***"Mahesh Chaudahry" (supra)*** it is well settled that High Court was required to proceed with circumspection for exercise of power under section 482 of Cr.P.C. In para 12 of the said judgment it has been disclosed that the superior courts are also required to

consider as to whether the allegations made in the FIR or the complaint petition fulfil the ingredients of the offences alleged against the accused or not.

11. Coming to the facts of the present case admittedly in the complaint it has been admitted that the vehicle in question was handed over to the petitioner on hire pursuant to an agreement and one month rent was also paid. If such a situation is there, it is clear case of civil consequence particularly considering Clause-6 of the said agreement. In view of above the judgment relied by the counsel for the O.P. No.2 is not helping the petitioner.

12. Admittedly, the matter relates to recovery of rent and if such a situation is there the O.P. No.2 has civil consequences and no penal action is attracted.

13. In view of above the entire criminal proceeding including cognizance order dated 20.02.2020 in connection with Sakchi P.S. Case No 78 of 2016, corresponding to G.R. No. 1627 of 2016, pending in the Court of learned Chief Judicial Magistrate, Jamshedpur, is quashed.

14. It is made clear that if any civil proceeding is there that will be decided in accordance with law without prejudice to this order as this order has been passed considering the criminal aspect of the matter.

15. This petition is allowed and disposed of. Pending I.A, if any, stands, disposed of. Interim order is vacated.

(Sanjay Kumar Dwivedi, J.)

Satyarthi/-